

**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU
MARKET DISPUTES RESOLUTION DIVISION**

<u>Frontier Communications of the Carolinas</u>)	
LLC,)	
)	
Complainant,)	
)	File No. EB-14-MD-002;
v.)	Docket No. 14-215
)	
Duke Energy Carolinas, LLC,)	
)	
Respondent.)	

**DUKE ENERGY CAROLINAS, LLC'S CONSOLIDATED DISCOVERY REQUESTS
TO FRONTIER COMMUNICATIONS OF THE CAROLINAS, LLC**

Pursuant to the Bureau's February 12, 2015 Briefing Order, Respondent Duke Energy Carolinas, LLC ("DEC") serves the following interrogatories, requests for production of documents, and requests for admission upon Complainant Frontier Communications of the Carolinas LLC ("Frontier").

DEFINITIONS

1. The "Agreement" refers to the January 1, 1979 joint use agreement between Nantahala Power and Light Company and Westco Telephone Company.

2. "Document" refers to anything contemplated by Fed. R. Civ. P. 34, and includes all media by which information or data may be stored or obtained, including, without limitation, books, pamphlets, letters, correspondence, telegrams, reports, memoranda, notes, calendars, records, studies, extracts, working papers, spreadsheets, budgets, charts, papers, indices, tapes, data sheets or cards, minutes, transcriptions, computer disks, diskettes, e-mail, instant messages, other electronic media, and any other written, printed, reported, transcribed, punched, taped or typed materials, movies or other photographic matter, however produced or reproduced, and all

mechanical or electronic sound recordings or transcripts thereof, in your possession, custody or control.

3. “Explain in detail” and/or “identify” shall be interpreted to require that you provide all the facts within your knowledge regarding the subject matter at issue in the interrogatory, document request and/or request for admission including, but not limited to, relevant dates, and the identity of every individual involved and/or that has personal knowledge of the relevant facts, including the full name, address, and telephone number of each entity and/or individual whose identity is responsive to a request, as well as the name, address, and telephone number of any individual’s employer.

4. “Relating to” means relating to, referring to, concerning, regarding, describing, discussing, reflecting, mentioning, constituting and/or supporting, directly and/or indirectly and each of these terms should be construed as meaning each and every one of these terms.

5. “You,” “your,” “Frontier,” refer to the Complainant in this action, Frontier Communications of the Carolinas LLC, and any employee, agent, business, employer or other entity or person acting on behalf of Frontier or for which Frontier acted on behalf of, and any predecessor or successor in interest of Frontier.

INTERROGATORIES

1. Explain in detail Frontier’s statement in its Reply regarding its Pole Attachment Complaint that “Over the past decades, it is highly likely that Frontier has fairly compensated Duke for any make-ready costs it has incurred on its behalf.” (Reply at 33). Identify all analysis or cost studies performed by Frontier, if any, prior to making this statement.

2. Identify all data relied upon by Susan Knowles in testifying that “Assuming that no other entity would ever have sought to attach to a joint use pole (and thus requested and paid

for the installation of a taller pole) before or at the same time as Frontier is not realistic.” Reply Affidavit of Susan L. Knowles, Exh. A to Frontier’s Reply, at ¶ 18. For example, identify, by year, when Frontier or its predecessors brought the DEC poles on which Frontier currently has attachments into joint use.

3. Was Frontier ever required to apply for a permit prior to making attachments to any joint use pole owned by DEC? If your answer is “yes,” please state the number of DEC poles for which Frontier was required to submit a permit application.

4. Did Frontier ever pay make-ready costs (such as pole change out, rearrangement, or other associated costs) in order to bring a new pole into joint use under the Agreement? If so, for each and every pole, please identify the date, amount and circumstances of such payment, including whether Frontier failed to pronounce the existing pole unsatisfactory and inadequate for its requirements at the time of erection.

5. Identify the following: (a) the average amount of usable space occupied (either actually or constructively) by Frontier on DEC’s poles; (b) the average number of Frontier attachments on each DEC pole; (c) the average wind/weight loading created by Frontier’s attachments on each DEC pole; and (d) the average height of Frontier’s highest attachment on each DEC pole.

6. Was the \$5.50 reciprocal annual joint use rental rate set forth in Article X of the Agreement just and reasonable? If your answer is “no,” when did Frontier or its predecessor first reach the conclusion that the rates required by the Agreement were unjust and unreasonable? Please explain the basis of your response.

7. Identify your annual pole cost (bare pole cost x annual carrying charge percentage) as calculated under the FCC's old telecom rate formula (in other words, excluding the "0.66" multiplier) for 2012-2014.

8. Describe what analysis or cost studies Frontier has performed, if any, to calculate the make-ready cost Frontier avoided by virtue of the Agreement. Identify the time frame in which such analysis or cost studies were performed.

9. Describe what analysis or cost studies Frontier has performed, if any, to determine the value associated with its standard space allocation under the Agreement. Identify the time frame in which such analysis or cost studies were performed.

10. Describe what analysis or cost studies Frontier has performed, if any, to determine the value to Frontier of the liability sharing provision in XIII of the Agreement. Identify the time frame in which such analysis or cost studies were performed.

11. Describe what analysis or cost studies Frontier has performed, if any, to calculate the value to Frontier of the contractual right to remain indefinitely attached to DEC's poles as set forth in XVI of the Agreement, notwithstanding termination of the Agreement without cause. Identify the time frame in which such analysis or cost studies were performed.

12. Identify the anticipated cost to Frontier of removing all attachments to DEC poles and either deploying its entire network underground or building a redundant network of poles (whichever amount is lower).

13. Does Frontier generally occupy the lowest position on each joint use pole covered by the Agreement? Please explain in detail the basis for your answer, and whether Frontier views

its pole position as an express or implied right under the Agreement. If your answer is “yes,” please describe all analysis or cost studies performed by Frontier, if any, to determine the value of occupying the lowest position on each joint use pole. Identify the time frame in which such analysis or cost studies were performed.

14. Under the Agreement, is Frontier entitled to use an amount of usable space in excess of its allocated space? Explain in detail the basis for your response. If your answer is “yes,” describe all analysis or cost studies performed by Frontier, if any, to determine the value of Frontier’s right to exceed its allocated space. Identify the time frame in which such analysis or cost studies were performed.

15. Other than imbalance in joint use pole ownership, does Frontier contend that any other piece of data or information supports its claim that it was in an inferior bargaining position when it executed the Agreement? If your answer is “yes,” please identify such data or information.

16. Please state, by year, the amount of money Frontier has reserved in connection with the joint use rental dispute under the Agreement for 2012, 2013, and 2014.

17. Identify the data or other information relied upon by Susan Knowles in testifying “This argument [that DEC would have deployed a network of poles shorter than the 40-foot poles required by the joint use agreement] makes no sense under general business practices pertinent to Duke’s use of its own utility poles.” Reply Affidavit of Susan L. Knowles, Exh. A to Frontier’s Reply, at ¶ 13. Describe in detail the “general business practices” referenced by Ms. Knowles, and Ms. Knowles’ basis of knowledge for DEC’s “general business practices.”

REQUESTS FOR PRODUCTION

1. Please produce all documents relating to Interrogatories 1-17 and/or Frontier's responses thereto.
2. Please produce all of Frontier's joint use agreements with electric companies (e.g. investor owned utilities, cooperatives, municipalities, etc.) other than DEC and its affiliates pursuant to which Frontier and an electric company attached to each other's poles in North Carolina between 2012 and 2014.
3. Please produce all documents (such as invoices and remittances) evidencing rates that electric companies charged Frontier and that Frontier charged electric companies for attachments to each other's poles in North Carolina pursuant to joint use agreements between 2012 and 2014.
4. Please produce all of Frontier's pole license agreements with telecommunications carriers, cable television companies, and internet service providers pursuant to which those entities made attachments to Frontier's poles in North Carolina between 2012 and 2014.
5. Please produce all documents relating to Frontier's calculation of the joint use rental rates under the Agreement from 2012 through 2014.
6. If your answer to Interrogatory No. 3 was in the affirmative, please produce all permit applications submitted by Frontier and any documents reflecting the approval or denial of those applications.

7. Please produce all documents and assumptions provided to, exchanged with, prepared for, or prepared by Mr. Timothy Tardiff in connection with his declarations in this proceeding.

REQUESTS FOR ADMISSION

1. Admit that Frontier never claimed to DEC that the annual rental rate methodology under the Agreement was unjust or unreasonable until after the issuance of the FCC's Pole Attachment Order in *In the Matter of Implementation of Section 224 of the Act; a National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 (Apr. 7, 2011). If Frontier denies this allegation, please explain in detail the reasons for that denial.

2. Admit that the joint use rental rates for Frontier's attachments to DEC's poles under the rate methodology set forth in the Agreement between 2012 and 2014 were as follows:

Year	Rate
2012	\$18.75
2013	\$19.01
2014	\$19.41

If Frontier denies this allegation, please explain in detail the reasons for that denial.

This 6th day of March, 2015.



Eric B. Langley
Robin F. Bromberg
Balch & Bingham LLP
1901 6th Avenue North, Suite 1500
Birmingham, Alabama 35203
Telephone: (205) 251-8100
Email: elangley@balch.com
Email: rbromberg@balch.com

Matthew G.T. Martin
Duke Energy Corporation
Associate General Counsel
410 S. Wilmington Street-PEB 20
Raleigh, NC 27601
Telephone: 919-546-7060
E-mail: Matthew.Martin@duke-energy.com

*Counsel for Respondent Duke Energy
Carolinas, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2015, I caused a copy of the foregoing CONSOLIDATED DISCOVERY REQUESTS to be served on the following (via the service method indicated):

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

VIA EMAIL

Christopher Killion
Lia Royle
Rosemary McEnery
Enforcement Bureau
Market Disputes Resolution Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
christopher.killion@fcc.gov
lia.royle@fcc.gov
rosemary.mcenery@fcc.gov

VIA EMAIL

David H. Solomon
Wilkinson Barker Knauer, LLP
2300 N. Street, NW, Suite 700
Washington, DC 10037
(202) 783-411
dsolomon@wbklaw.com

VIA EMAIL

Joseph J. Starsick, Jr.
Associate General Counsel
Frontier Communications
1500 MacCorkle Avenue, S.E.
Charleston, West Virginia 25314
(304) 344-7644
Joseph.Starsick@ftr.com


Robin F. Bromberg